FAXBACK 13517

CONTROL DEVICES REQUIRED BY THE ORGANIC AIR EMISSION STANDARD
PPC 9534.1991(01)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

December 3, 1991

MEMORANDUM

SUBJECT: RCRA Regulations Applicable to Control Devices Required by the Organic Air Emission Standards (40 CFR Parts 264 and 265 subparts AA and BB)

FROM: James Michael, Acting Chief
Assistance Branch (OS-343)
Office of Solid Waste

TO: Catherine Massimino
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In your memorandum of June 19, 1991, you ask for clarification as to the standards that apply to control devices required by the Organic Air Emission Standards for Process Vents and Equipment Leaks, promulgated pursuant to RCRA Section 3004(n) on June 21, 1990 (55 FR 25454). This rule is codified at 40 CFR Parts 264 and 265 Subparts AA and BB. You identify potential ambiguity as to what standards are applicable when the control device meets the definition of a regulated unit under another portion of the regulations. You provide the example of a control device at a permitted facility that fits the definition of an incinerator and ask what standards apply -- the requirements of the organic air emission rule (e.g., to reduce total organic air emissions from all affected process vents at a facility by 95 percent weight or greater), or the Part 264 Subpart 0 incinerator requirements (e.g., the requirement to achieve a destruction or removal efficiency (DRE) of at least 99.99%). My office, in conjunction with the Office of General Counsel, has concluded that, as a general matter, the Subpart AA and BB standards govern such control devices.

1 Of course, the air emission rule does not limit EPA's "omnibus" authority under RCRA Section 3005 (c), 40 CFR Section 270.32(b), to impose, on a case-by-case basis, any permit conditions regarding air emissions that are determined to be necessary to protect human health and the environment. In addition, the Subpart AA and BB standards address only the performance that must be achieved by a control device with respect to organic air emissions from process vents and equipment leaks covered by the air emission rule. If the device is a separate unit that is also treating separate hazardous wastestreams, the unit must of course comply with the appropriate Part 264 or 265 unit standards for its treatment of those wastestreams.

The June 21, 1990 organic air emission rule required the use of control devices to reduce emissions from certain types of process vents and equipment leaks and required that the devices meet standards specified in the rule, such as the requirement in 40 CFR Section 264.1033 (c) that enclosed combustion devices reduce the organic emissions vented to them by 95 percent or greater by weight. EPA recognized in promulgating the rule that incinerators might be among the devices that would be used to achieve the standards imposed, see, e.g., 55 FR 25455. Nonetheless, the

discussion and analyses accompanying the rule -- including, for example, the health impact and cost impact analyses -- are based on the premise that the devices installed pursuant to the rule will achieve the standards established by the rule, not the general Part 264 and 265 standards. See 55 FR 25486-25489, 25462, and 25477 (June 21, 1990).

The conclusion that the organic air emission rule standards govern the performance of the required control devices is consistent with the purpose and context of the rule. A facility that, pursuant to the organic air emission rule, installs a control device that appears to fit the definition of an incinerator is not getting a "break" by being subject to the air emission rule standards rather than the Subpart 0 standards. On the contrary, the air emission rule for the first time requires the reduction of gaseous emissions from certain equipment leaks and process vents that were previously unregulated (except to the extent they were regulated on a case-by-case basis pursuant to the omnibus authority). The standards imposed by the organic air emission rule are those which EPA determined to be protective. See 55 FR 25486-25488 (June 21, 1990).

There is one caveat to this conclusion. You had expressed concern that there may be instances in which a facility attempts to use the organic air emission rule as a means of subjecting itself to less stringent standards than it would otherwise be subject to -- where, for example, a facility constructs a treatment train in which an incinerator is preceded by a unit with regulated process vents or equipment leaks in an attempt to characterize the incinerator as a Subpart AA or BB control device. In such circumstances, permit writers may conclude that the device is not a bona fide Subpart AA or BB control device and impose the general incinerator standards. These decisions will have to be made on a case-by-case basis. Headquarters will assist permit writers in these decisions upon request.

If you have any questions or concerns, please call me at FTS 260-1206, or Brian Grant of OGC at FTS 260-6512.

cc: Permit Section Chiefs, Regions I-X
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Brian Grant, OGC